

Case Summary

Earl Jackson appeals the trial court's denial of his motion to correct erroneous sentence. We affirm.

Issues

Jackson raises three issues, which we consolidate and restate as two:

- I. whether Jackson used the proper motion to bring his cause of action into court; and
- II. whether the issue of improper sentencing is barred by the doctrine of res judicata.

Facts

On April 3, 1996, Jackson was convicted for the 1995 murder of Derik Hale. The trial court sentenced him to fifty-five years imprisonment. Jackson v. State, 697 N.E.2d 53, 56 (Ind. 1998). On direct appeal Jackson raised issues about his conviction and alleged sentencing errors. Id. at 56. The supreme court affirmed Jackson's conviction and sentence. Id. Jackson later filed a petition for post-conviction relief, which was denied on April 21, 2006. Jackson next filed a motion for correction of sentencing determination on September 26, 2007. In that motion, Jackson argued the trial court used the incorrect statute of P.L. 164-1994 § 2, which had a presumptive sentence for murder of fifty years. He asserted the correct statute that should have been used was P.L. 164-1994 § 5, which had a presumptive sentence of forty years. The trial court denied the motion on November 19, 2007, finding the issue was barred by the doctrine of res judicata. Jackson now appeals.

Analysis

I. Motion to Correct Sentence

The State asserts that Jackson did not use the proper motion to bring his cause of action. We agree. A motion to correct erroneous sentence is only appropriate when the sentence is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). What that means is that the statutory motion can only be used to correct a sentence when the errors are obvious from the face of the judgment, without reference to other matters in or extrinsic to the record. Id. at 787-88. The reason why the use of this motion is so narrowly construed is because there are other, more broad, vehicles to bring this type of action, such as direct appeal or post-conviction proceedings. Id. at 787.

Jackson claims that the trial court never rendered a sentencing judgment in this case. He asserts that the abstract of judgment cannot be used, and therefore what must be used is the sentencing transcript. Jackson states that the trial court's erroneous conclusion is specifically stated, pursuant to statute P.L. 164-1994 § 2, and the error is evident on the face of the sentencing transcript.

If we are to use the sentencing transcript, the full transcript must be considered. We cannot simply look at one or two chosen phrases and deem those to be the sentencing judgment in full. It is clear from the transcript that the court weighed all aggravating and mitigating factors and intended to impose a sentence of fifty-five years. The errors and the factors used to determine the sentence are intertwined in the transcript, and we cannot selectively ignore the references to other matters in the record. Jackson's sentence is not facially erroneous.

II. Res Judicata

Even if Jackson had filed the correct motion, the State contends his claim is barred by res judicata. We agree. The doctrine of res judicata bars the re-litigation of the same issue or claim. Collins v. State, 873 N.E.2d 149, 157 (Ind. Ct. App. 2007) trans.denied.

In order for a claim to be precluded under the doctrine of res judicata, the following four requirements must be satisfied: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in prior action, (4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies.

Afolabi v. Atlantic Mortg. & Investment Corp., 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006).

Claim preclusion cannot be escaped simply because the petitioner is using different language. Cambridge v. State, 468 N.E.2d 1047, 1049 (Ind. 1984) (emphasis added). “[W]here an issue, although differently designated, was previously considered and determined upon a criminal defendant’s direct appeal, the State may defend against defendant’s post-conviction relief petition on grounds of prior adjudication or res judicata.” Id.

The issue of improper sentencing was raised by Jackson, then discussed and decided by our supreme court. It stated:

[T]here is a potential problem with the sentence based on our holding in Smith v. State, 675 N.E.2d 693 (Ind. 1996). In that case, in the face of two contradictory statutes, we held that, when sentencing for murders committed between July 1,

1994 and May 5, 1995, trial courts must employ the statute which prescribes a forty year presumptive sentence and allows an enhancement of up to twenty years. Id. at 697. Here it is quite clear that the trial court believed that it was to use the simultaneously-existing statute which established a fifty year presumptive sentence with a ten year maximum enhancement. The trial court then weighed the aggravators and mitigators and added five years for a total of fifty-five years. However, in situations where we believed the trial court showed a clear intent to impose a specific term of imprisonment, we have affirmed in spite of the use of the erroneous presumptive sentence, as the maximum sentence under either statutory scheme is sixty years. Beason v. State, 690 N.E.2d 277, 285 n.21 (Ind. 1998) (finding remand unnecessary as trial court's intent to impose maximum sentence was clear); Birdsong v. State, 685 N.E.2d 42, 47 n.2 (Ind. 1997) (same). Here we find that the trial court indicated an intent to impose a sentence five years less than the maximum sentence, and thus affirm the sentence of fifty-five years.

Jackson, 697 N.E. 2d at 56.

Jackson's main argument is that he did not raise this exact issue on direct appeal, and therefore the third requirement of res judicata has not been met because the supreme court considered the problem sua sponte. We disagree. We see no reason why a court cannot address potential problems in both a direct claim and a closely related claim.

Our supreme court acknowledged that the trial court assessed Jackson's sentence in the face of two contradictory statutes, and decided it was acceptable because the trial court intended to impose a specific sentence. Jackson, 697 N.E.2d at 56. Therefore, we agree with the trial court that the claim is barred by res judicata.

If one were to interpret Jackson's actions as not having raised the issue, then he would have waived it by not bringing it up on direct appeal. If a sentencing issue is known

or available at the time of direct appeal, and it is not raised, it is waived for post-conviction review. Reed v. State, 856 N.E.2d 1189, 1193 (Ind. 2006). A post-conviction relief petition is equivalent to a motion to correct erroneous sentence for some procedural purposes. See State ex rel. Gordon v. Vanderburgh Circuit Court, 616 N.E.2d 8, 9 (Ind. 1993). We see no reason to treat them differently for the procedural purposes of this case. The argument Jackson now makes was available at the time of his direct appeal, and is waived.

Conclusion

Jackson is barred from re-litigating the sentencing issue. He used the wrong vehicle to bring his cause of action into court, and even if he had jumped that procedural hurdle, his claim is barred by res judicata. The sentencing issue was raised by Jackson, and considered and decided by our supreme court. If he did not intend to bring the issue up on direct appeal, then he has waived the issue. For the foregoing reasons, we affirm the trial court.

Affirmed.

CRONE, J., and BRADFORD, J., concur.